

Remarks

In response to the Office Action dated January 15, 2008, Applicant respectfully requests reconsideration based on the above claim amendment and the following remarks. Applicant respectfully submits that the claims as presented are in condition for allowance. Claim 1 has been amended to correct matters of form.

Interview Summary

A brief telephone interview was conducted between the undersigned and Examiner Sheleheda on March 7, 2008. During the interview it was discussed it was physically impossible in the ring topology of Tomich for the “Optical Network Unit” in Tomich (as construed by the Office Action) to be directly coupled to more than one subscriber. The Examiner indicated agreement and requested appropriate written amendments be submitted for review.

Claim Objections

Claims 1 is objected to as using the term “transmits” instead of “transmitting”. Claim 1 has been amended to change “transmits” to “transmitting”, as such the objection may be withdrawn.

102 Rejections

Claims 1-6, 8, 10-12, 17-21 and 24-28 have been rejected under 35 USC §102(b) as being anticipated by Tomich (US Pat. 5,983,068). Applicant respectfully traverses the rejections.

Amended independent claim 1 recites, in pertinent part:

“[a] system for delivering to a plurality of subscribers located on a second side of a right-of-way a first signal that is free from a right-of-way franchise fee, the system comprising...an optical network unit on the second side of the right-of-way in communication with the multiplexer and in communication with the plurality of subscribers wherein the optical network unit separates the combined signal into the first signal and the second signal.

Applicant respectfully asserts that Tomich fails to describe each and every claim element. For example, Tomich fails to describe an “...an optical network unit on the

second side of the right-of-way in communication with the multiplexer and in communication with the plurality of subscribers ...”. In its rejection, the Office Action refers to figure 2 and expressly equates the set top box **24** to the recited optical network unit. (See, Office Action page 4, l. 5-8). The Office Action then cites Column 4, lines 24-37 in support of its rejection.

Applicant respectfully points out that the cited portion of Tomich describes that the set top box **24** contains a de-multiplexer **70** that de-multiplexes (i.e. separates) the combined digital TDM signal into user bandwidth segments (i.e. data/voice) and common one way segments (i.e. TV signals) for the subscriber with the set top box **24**. However, Applicant respectfully points out that the set top box **24** is necessarily in communication with only one subscriber which is the owner of the set top box. Other set top boxes intervene between the set top **24** and another subscriber (See, FIGS. 2 and 3). As such, Tomich does not describe that the set top box **24** is in communication with the plurality of subscribers.

Since Tomich fails to describe each and every claim element, Tomich fails to anticipate amended independent claim 1. Amended independent claim 1 is allowable over Tomich for at least this reason. Amended independent claims 11, 20 and 26 recite similar subject matter and are allowable for at least the same reason. Claims 2-10, 12-19, 21-25 and 27-28 depend from an allowable independent claim 1, 11, 20 or 26 and are allowable for at least the same reasons. Support for the amendment may be found in paragraph 0055 of the specification.

103 Rejections

Claims 7, 9, 13-16, and 22-23 stand rejected under 35 USC 103(a) as being anticipated by Tomich in view of Applicant's Admitted Prior Art ("APA"). Applicant respectfully traverses the rejections. Claims 7, 9, 13-16 and 22-23 depend from an allowable independent claim 1, 11 or 20 and are allowable for at least the same reasons.

Conclusion

Applicant asserts that the application including claims 1-28 is now in condition for allowance. Applicant requests reconsideration in view of the amendments and

remarks above and further request that a Notice of Allowability be provided. Should the Examiner have any questions, please contact the undersigned.

No fees are believed due. However, please charge any additional fees or credit any overpayment to Deposit Account No. 50-3025.

Respectfully submitted,

Date: March 31, 2008

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